

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

CARL R. CALDWELL
and GAYE A. CALDWELL

PLAINTIFFS

v.

Case No. 1:16-cv-01015

UNITED STATES OF AMERICA

DEFENDANT

JUDGMENT

Now on this 20th day of November 2018, for the reasons stated in its Findings of Fact and Conclusions of Law, the Court enters judgment as follows:

1. The Court finds that although the true boundary extends into the Caldwell Property approximately 70 feet, prior to the FWS Property being purchased by the United States, a boundary by acquiescence was established where the old fence line used to be and the power line poles are currently located.

2. The Court further finds that the true and common boundary line shall be established as follows:

A tract of land being part of Section 28, Township 18 South, Range 05 West of the Fifth Principal Meridian, Ashley County, Arkansas, as shown on the General Land Office plat from the Surveyor's Office in Little Rock, Arkansas dated September 30th, 1842, being more particularly described as follows:

BEGINNING at a set 3/4-inch rebar with a 2-1/2-inch aluminum cap stamped "U.S. Fish & Wildlife Service" set by Robert S. Shotts, PLS 1208, having Arkansas State Plane (South Zone 0302), NAD 83 (2011) (EPOCH: 2010.0000), U.S. Foot Coordinates North: 1475882.380, East: 1430010.440 and Latitude: 33 degrees 06 minutes 55.80 seconds, Longitude: 91 degrees 36 minutes 56.55 seconds;

Thence on a grid bearing along the east line of said Section 28 South 00 degrees 29 minutes 59 seconds East a distance of

3974.89 feet to a set 3/4-inch by 36-inch rebar with a 2-1/2-inch aluminum cap stamped "U.S. Fish & Wildlife Service" at the Southeast corner of the North Half of the Southeast Quarter of said Section 28;

Thence along the South line of said North Half of the Southeast Quarter North 88 degrees 36 minutes 46 seconds West a distance of 81.88 feet to a set 3/4-inch by 36-inch rebar with a 2-1/2-inch aluminum cap stamped "U.S. Fish & Wildlife Service";

Thence North 00 degrees 16 minutes 53 seconds West a distance of 3974.56 feet to a set 3/4-inch by 36-inch rebar with a 2-1/2-inch aluminum cap stamped "U.S. Fish & Wildlife Service" on the north line of said Section 28;

Thence South 88 degrees 29 minutes 54 seconds East a distance of 66.73 feet along the north line of said Section 28 to the place of beginning.

Said tract contains 6.78 Acres.

3. The surveyed common property line will and shall ever be hereafter, the common boundary line between the properties owned by the parties hereto for the purpose of ownership of such properties.

4. The Court further finds that a field road was built to the west of the power line poles. Further, the Caldwells and their tenants had unhindered use of the field road to access the Caldwell Property for cultivation and to access to the water wells that were drilled since the mid 1960s.

5. In addition, the Court finds that the tenant farmers did not ask permission of the deYamperts to use the field road. As a result, the Caldwells and their tenants acquired a private way by prescription for use of the field road to access the Caldwell Property for cultivation and access to the water wells prior to the purchase of the deYampert property by the United States.

6. The Court finds that the description of the field road is described as follows:

A tract of land being part of Section 28, Township 18 South, Range 05 West of the Fifth Principal Meridian, Ashley County, Arkansas, as shown on the General Land Office plat from the Surveyor's Office in Little Rock, Arkansas dated September 30th, 1842, being more particularly described as follows:

COMMENCING at a set 3/4-inch rebar with a 2-1/2-inch aluminum cap stamped "U.S. Fish & Wildlife Service" set by Robert S. Shotts, PLS 1208, having Arkansas State Plane (South Zone 0302), NAD 83 (2011) (EPOCH: 2010.0000), U.S. Foot Coordinates North: 1475882.380, East: 1430010.440 and Latitude: 33 degrees 06 minutes 55.80 seconds, Longitude: 91 degrees 36 minutes 56.55 seconds;

Thence on a grid bearing along the north line of said Section 28 North 88 degrees 29 minutes 54 seconds West a distance of 66.73 feet to a set 3/4-inch by 36-inch rebar with a 2-1/2-inch aluminum cap stamped "U.S. Fish & Wildlife Service" for the point of BEGINNING;

Thence South 00 degrees 16 minutes 53 seconds East a distance of 3974.56 feet to a set 3/4-inch by 36-inch rebar with a 2-1/2-inch aluminum cap stamped "U.S. Fish & Wildlife Service" on the south line of the North Half of the Southeast quarter of said Section 28;

Thence North 88 degrees 36 minutes 46 seconds West a distance of 22.32 feet along the south line of said of said North Half of the Southeast Quarter to a set 5/8-inch by 24-inch rebar on the centerline of a road;

Thence continuing North 88 degrees 36 minutes 46 seconds West a distance of 10.01 feet;

Thence North 01 degrees 24 minutes 45 seconds West a distance of 562.30 feet;

Thence North 00 degrees 09 minutes 21 seconds West a distance of 309.17 feet;

Thence North 03 degrees 23 minutes 11 seconds East a distance of 111.84 feet;

Thence North 00 degrees 46 minutes 39 seconds West a distance of 378.98 feet;

Thence North 04 degrees 59 minutes 51 seconds West a distance of 90.84 feet;

Thence North 06 degrees 41 minutes 34 seconds East a distance of 145.79 feet;

Thence North 00 degrees 16 minutes 01 seconds West a distance of 878.35 feet

Thence North 00 degrees 22 minutes 47 seconds West a distance of 942.56 feet;

Thence North 00 degrees 02 minutes 38 seconds East a distance of 398.31 feet;

Thence North 05 degrees 46 minutes 21 seconds West a distance of 124.21 feet;

Thence North 17 degrees 19 minutes 37 seconds East a distance of 36.18 feet to the North line of said Section 28;

Thence South 88 degrees 29 minutes 54 seconds East a distance of 10.39 feet along said North to a set 5/8 inch by 24 inch rebar on the centerline of a road;

Thence continuing along said North line South 88 degrees 29 minutes 54 seconds East a distance of 18.33 feet to the point of beginning.

Said tract contains 3.03 Acres.

13. The Court further finds that the Caldwells and their tenants are obligated to repair and maintain said field road in a proper condition. However, the Caldwells and their tenants shall notify the FWS designated representative and shall schedule said repairs and maintenance in a manner and at such times as approved by the designated FWS representative.

14. The Court's opinion only finds that the Caldwells and their tenants acquired a private way by prescription for use of the field road to access the Caldwell Property for cultivation and access of to the water wells. The opinion does not determine what right a member of the public would have, if any, to use this field road.

15. The Court further finds all parties shall bear their own fees and costs.

IT IS SO ORDERED, this 20th day of November, 2018.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge